IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 214 OF 2005

Mr. Gunda Gnyanu Mane, since
deceased, through his heir and
legal person Rukmini Gunda Mane ..Appellant

versus

Sole Managing Trustee
Ganapati Panchayatan Sanstha ..Respondents

Mr. Umesh Mankapure for the Appellant.
Mr. Uday Warunjikar for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 15TH SEPTEMBER,2005

ORAL ORDER :

1. Heard learned counsel for the appellant and the respondents.

2. The respondents is a Ganpati Panchayatan Sanstha, at Sangli, represented by the Sole Managing Trustee. Original defendant Gunda Mane was the servant in the said Sanstha. In that capacity he was given a room to occupy. After his retirement the suit was filed for possession. That was opposed

by the original defendant Gunda raising various pleas. Firstly, that he is the tenant, secondly, that the suit was not maintainable before the court where it was filed as the Bombay Rent Act was applicable. This contention was accepted by the trial court. The plaintiff therefore filed an appeal which was allowed and therefore this Second Appeal.

3. There is no dispute of the fact even by the appellant (It is to be noted that Gunda died during the pendency of the suit and legal heir who is appellant is now fighting) that Gunda was in service of the respondents. As like any other servant, he was given room to occupy. Not a single document either produced by Gunda - original defendant or by the plaintiff shows that anything was paid by Gunda towards rent or recovered towards rent. Obviously there is no written contract between the parties. Counsel for the appellant repeatedly stressed upon three documents, viz. three receipts for payment of arrears by Gunda to the Sanstha and the salary register. According to him the rent was directly being recovered or deducted from his salary. He was asked whether in the record of the plaintiff Sanstha the deduction is shown towards rent. He had no answer. Perhaps he did not know about that. Counsel for the respondents pointed out that even

though the register was produced, deduction is not shown in the column of house rent. Therefore, there is absolutely no document with the appellant to show that she was the tenant or that she was paying anything to the Sanstha towards rent. Three receipts relied upon also do not show that it was paid or amount was recovered as rent. They only mention as arrears.

4. Therefore, the appellate court, in the circumstances, was perfectly justified in setting aside the decree. This is nothing but an attempt to sit over the property after the service period is over and even after death of the original tenant. There is no substance in this appeal, it is dismissed along with Civil Application.

15.9.2005 (D.G. DESHPANDE, J.)